United Nations CAC/COSP/IRG/I/4/1/Add.8

Conference of the States Parties to the United Nations Convention against Corruption

Distr.: General
26 March 2015

Original: English

Implementation Review Group
Sixth session
Vienna, 1-5 June 2015
Item 2 of the provisional agenda*
Review of implementation of the United Nations Convention against Corruption

Executive summary

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II. Executive summary

Marshall Islands

1. Introduction: Overview of the legal and institutional framework of the Marshall Islands in the context of implementation of the United Nations Convention against Corruption

The Government of the Marshall Islands acceded to the Convention on 17 November 2011. Pursuant to section 1(3)(d), article V of the Constitution, the Nitijela (Parliament) approved the accession of the Marshall Islands. The Convention entered into force on 17 December 2011.

The Marshall Islands was placed under the administration of the United States of America after the Second World War as one of the United Nations Trust Territories, but gained independence in 1983 and achieved full sovereignty in 1986, under the Compact of Free Association with the United States of America. Its governing system is therefore much influenced by and modelled after the American and its legal system. It also follows the monist approach making international treaties and conventions the law of the land after ratification. English is the country's main official language.

The Constitution, adopted in 1979, is the supreme law of the Marshall Islands, and any inconsistent law will, to the extent of the inconsistency, be void. The Government of the Marshall Islands operates under a mixed parliamentary-presidential system. Elections are held every four years in universal suffrage, with each of the 44 constituencies electing representatives to the lower house of the bicameral legislature of the Marshall Islands, the Nitijela. The legislative authority is vested in the Nitijela, pursuant to article VI of the Constitution. The upper house, the Council of Iroij, is an advisory body comprising of 12 tribal chiefs. The executive branch consists of the President, elected by the Nitijela, and his/her Presidential Cabinet of 10 Ministers. The judicial power of the Marshall Islands is vested in the Supreme Court, High Court, Traditional Rights Court and such District, Community or other courts, as created by law. These courts are independent of the legislative and executive powers (art. VI, Constitution; s. 203, Judiciary Act).

Key authorities in regard to the fight against corruption are the Attorney General's Office, National Police, Auditor-General's Office, Public Service Commission, Government Ethics Board and the Domestic Financial Intelligence Unit (DFIU).

2. Chapter III: Criminalization and law enforcement

Regarding statistics of corruption cases investigated, prosecuted and adjudicated, it was confirmed during the country visit that there have only been a very limited number of cases in the last few years. The absence of case examples affects the analysis of the implementation of the chapter by the Marshall Islands, insofar as it was not possible to reach a determination of the effective implementation of the legislative framework in practice.

2.1. Observations on the implementation of the articles under review

Bribery and trading in influence (arts. 15, 16, 18 and 21)

Active and passive bribery of public officials is criminalized in section 240.1 of the Criminal Code (CC). "Public servant" is the term used in the law, which is comprehensively defined, in accordance with article 2 (s. 240.0(7)) of the United Nations Convention against Corruption. Passive bribery is further criminalized in section 1704 of the Ethics in Government Act. There have been no completed prosecutions arising from allegations of bribery.

Only active bribery of foreign public officials is addressed in section 240.1(3) of CC.

The Marshall Islands relies on the general bribery provisions to pursue cases of trading in influence. Supposed influence is covered by section 240.1(2)(e) of CC and through the impersonating of a public servant (s. 241.9, CC).

Active and passive bribery in the private sector is partially covered by section 224.9 of CC; however, the scope of perpetrators (i.e. trustee, lawyer) is limited and the offence is classified as a misdemeanour.

Money-laundering, concealment (arts. 23 and 24)

The offence of money-laundering is provided for in the Banking Act. Section 166 contains the objective and subjective elements of the money-laundering offence as required under the Convention. However, it only penalizes a person who "renders assistance" to the conversion or transfer of property and to concealing or disguising the true nature, origin, location, disposition, movement or ownership of such property. The Marshall Islands has adopted measures that broadly cover the participatory acts outlined in article 23(1)(b)(ii) (ss. 2.06, 5.01 and 5.03, CC; s. 166(1)(b) and (3), Banking Act). The Banking Act uses a "serious offence" threshold approach for predicate offences where "maximum penalty is imprisonment or other deprivation of liberty for a period of not less than 12 months" (s. 102(dd)), which includes most offences under the Convention against Corruption. There has been one successful prosecution of a money-laundering case in the Marshall Islands in 2003.

Concealment is criminalized in CC, more generally under section 241.7, but also for specific acts, such as the concealment of recordable instruments (s. 224.4).

Embezzlement, abuse of functions and illicit enrichment (arts. 17, 19, 20 and 22)

Embezzlement is addressed in section 240.7 of CC and section 1704(9) of the Ethics in Government Act. Property is also broadly defined to include "anything of value". In relation to private sector embezzlement, section 224.14 of CC only covers "property that has been entrusted to such person as a fiduciary" and the penalty is a misdemeanour.

Abuse of functions is criminalized in section 240.6 of CC, whereby a public servant (as defined in section 240.0(7) of CC) who (1) "knowingly does an unlawful act under the color of office" will be guilty of a felony of the second degree or (2) "recklessly neglects to perform the duties of the office as provided by law" is guilty of a felony of the third degree.

Section 240.8 of CC specifically criminalizes illicit enrichment.

Obstruction of justice (art. 25)

Obstruction of justice is criminalized principally in sections 240.2, 241.6, 241.7, 242.2 and 242.3 of CC. In particular, section 241.6 (tampering with witnesses and informants) appears to cover the bribery of witnesses and informants and also extends to specified means (use of physical force, threats or intimidation), while section 242.2 could conceivably extend to interference with law enforcement officials. Section 240.2 (influencing official matters by threat) is the general provision that could be applied. There have been no cases of obstruction of justice.

Liability of legal persons (art. 26)

Section 1.13(8) of CC defines "persons" as both natural and legal persons. The liability of a legal person can be civil, criminal or administrative, as provided for in the Business Corporations Act, Revised Partnership Act, Limited Partnership Act and Limited Liability Company Act, which are collectively known as the Associations Law. There have been no examples of implementation, either investigations or proceedings.

Participation and attempt (art. 27)

The participation in offences is criminalized in the Marshall Islands (ss. 2.06, 5.02 and 5.03, CC). "Criminal attempt" is covered in section 5.01 of CC. There have been no related investigations or prosecutions. Preparation is criminalized in section 2.06(3)(a)(ii) of CC.

Prosecution, adjudication and sanctions; cooperation with law enforcement authorities (arts. 30 and 37)

The determination of sanctions is covered in section 1.04 of CC.

Public officials enjoy functional immunity. However, according to article IV, section 16 of the Constitution, Nitijela Members enjoy functional immunity from civil or criminal proceedings for conduct concerning Nitijela matters. Furthermore, "Members of the Nitijela shall, except in cases of felony, be privileged from arrest during any session of the Nitijela, and in going to or returning from the same" (art. IV, s.16(2), Constitution).

The Marshall Islands follows a system of discretionary prosecution. The Attorney General, pursuant to section 3, article VII of the Constitution, has broad discretion to prosecute. There are several legal safeguards in place that require him or her to exercise this discretion judiciously, in the public interest and based on the sufficiency of evidence. Prosecution decisions are also subject to judicial review, although there have been no such cases.

Conditions on release pending trial are designed to ensure the presence of the defendant at the criminal proceedings (r.46, Rules of Criminal Procedure).

The Marshall Islands has a Parole Board whose functions are outlined in section 306 of the Parole of Prisoners Act. The Board makes recommendations on parole to the Cabinet. There have never been persons released on parole in corruption-related matters, as such a request has never come before the Board.

The suspension of a Government employee who has been charged with an offence is covered by rule 71 of the Public Service Regulations. However, even where an employee has been accused of an offence, his/her immediate supervisor or the Public Service Commission may determine matters of suspension. There is an appeal process, whereby the Appeal Board's recommendation is given to the Public Service Commissioner who makes the ultimate decision. The termination of Government employees is covered in section 6.07 (termination of public employment for felony conviction) of CC, while the "suspension with or without pay for specific periods of time" may be imposed by the Government Ethics Board (s. 1706(2)(b) of the Ethics in Government Act). Thus, the disqualification of a convicted person from holding public office is covered. Further civil and administrative remedies against public officials are covered in section 1706 of the Ethics in Government Act. The Government Ethics Board "may [also] make regulations ... to specify additional ethical restrictions and requirements for public officials" (s. 1707).

The Marshall Islands used to have a prisoner rehabilitation programme, which ceased to exist in 2013. There are currently no prison facilities to house female inmates.

The Marshall Islands has established measures to encourage defendants and persons who participated in the commission of offences to cooperate in investigations and prosecutions, and to provide testimony or evidence in line with article 37 of the Convention against Corruption. The Attorney General's Office has a wide discretion and engages in plea-bargaining.

Protection of witnesses and reporting persons (arts. 32 and 33)

The Marshall Islands has not adopted measures to protect witnesses or experts, with the exception of permitting an initial appearance in preliminary proceedings by video conference (r. 5, Rules of Criminal Procedure). In relation to reporting persons, section 914 of the Auditor-General Act protects informers in relation to their identity when they provide the Auditor-General with information.

Freezing, seizing and confiscation; bank secrecy (arts. 31 and 40)

The Proceeds of Crime Act (POCA) and Banking Act provide for conviction-based confiscation and provisional measures for purposes of confiscation. Under section 222 of POCA, the High Court may, on the application of the Attorney General, make a confiscation order against tainted property in relation to a person's conviction of a serious offence. In relation to money-laundering offences, the relevant provision is section 174 of the Banking Act, and either the Commissioner or the Attorney General can make the application. "Serious offence" is defined in this context to include any offence in or outside the Marshall Islands, which is punishable by imprisonment for not less than 12 months (s. 102, Banking Act). "Tainted property" under POCA may be inferred under certain circumstances to be property used in, or in connection with, the commission of a serious offence or "proceeds of crime" (s. 205(1)(p)). The authorities confirmed that tainted property includes instrumentalities used and destined for use in the commission of a serious offence. Under the Banking Act, "tainted property" means any property obtained in whole or in part from the proceeds of a criminal offence or from the proceeds of money-laundering (s. 102(ff)). "Proceeds of crime" is defined under section 102 of

the Banking Act as any property derived from or obtained, directly or indirectly through the commission of a serious offence; in POCA, this is defined as "fruits of a crime, or any property derived or realized directly or indirectly from a serious offense and includes, on a proportional basis, property into which any property derived or realized directly from the offense was later successively converted, transformed or intermingled, as well as income, capital or other economic gains derived or realized from such property at any time since the offense" (s. 205(1)(k)). In general, there were a number of inconsistencies noted between POCA and the Banking Act.

The police officer who seizes property is the administrator of that property (s. 255, POCA).

Sections 251, 252, 254, 258 and 261-265 of POCA provide for production or monitoring orders against property under certain conditions to prevent the dealing or disposal of the property, as well as search and seizure of suspected tainted or other property under a search warrant, or without in emergencies. The procedure needed to obtain a court-issued warrant for investigating authorities to access government and financial or commercial records was deemed straightforward in practice.

Section 217(1)(b) of POCA provides that "the defendant and any other person who claims an interest in the property may appear and adduce evidence at the hearing of the application and (c) the High Court may ... direct the Attorney-General to: (i) give notice of the application to any person who, in the opinion of the High Court, appears to have an interest in the property".

The rights of bona fide third parties are covered in section 225 of POCA.

There have been no related cases of confiscation, freezing or seizure.

Section 154(1)(d) of the Banking Act provides for bank secrecy to be lifted by a judicial order.

Statute of limitations; criminal record (arts. 29 and 41)

The period of limitations for offences is outlined in section 1.06 of CC. For most corruption offences, including felonies and misdemeanours, the limit is six years, while for "petty misdemeanours" it is one year. The limitation commences from the date of the commission of the offence. The period of limitation can be tolled when: (a) the accused is continuously absent from the Marshall Islands or has no reasonably ascertainable place or abode or work within the Marshall Islands, but in no case shall the limitation period be extended by more than three years from the expiration of the prescribed period, or (b) a prosecution against the accused for the same conduct is pending in the Marshall Islands (s.1.06(6), CC).

Previous convictions, including foreign convictions, can be taken into account during sentencing by the courts.

Jurisdiction (art. 42)

Jurisdiction over offences committed on board vessels and aircraft appears to be regulated as an extension of the territorial jurisdiction of the Marshall Islands and is addressed for money-laundering offences. The Marshall Islands has not adopted the

active and passive personality principles or the State protection principle in its domestic law.

Consequences of acts of corruption; compensation for damage (arts. 34 and 35)

The Marshall Islands has only adopted a few measures to address consequences of corruption. Under the Associations Law, the Registrar of Corporations can deregister a company. Under the Procurement Code, the Bidding Committee can reconsider procurement grants where there are acts of corruption.

Compensation for entities or persons who have suffered damage as a result of an act of corruption is addressed in sections 215 of POCA and 185 of CC.

Specialized authorities and inter-agency coordination (arts. 36, 38 and 39)

The key anti-corruption authorities include the Attorney General's Office, National Police, Office of the Auditor General and DFIU. There is also the Public Service Commission and Government Ethics Board. To date, of the limited number of corruption cases, most have involved public funds that the Auditor General's Office has investigated. DFIU has an administrative role and is located within the Banking Commission; it currently does not have a dedicated staff member.

Arrangements, both formal and informal, are in place for cooperation among the authorities. There are memoranda of understanding between the compliance authorities and between the National Police and Auditor General's Office, with also another pending between the Police and Customs Authority. A formal arrangement focuses on money-laundering (Anti-Money Laundering Taskforce). Otherwise, informal cooperation is commonly used.

While there is no comprehensive programme of interaction or outreach to the private sector, basic informal arrangements facilitate cooperation between the national authorities and the private sector. There is no specific duty to report corruption by public officials. However, the Auditor-General's Office encourages persons to report acts of corruption through its hotline and website.

2.2. Successes and good practices

Overall, the following success and good practice in implementing Chapter III of the Convention is highlighted:

- Proactive sharing of information between national law enforcement authorities in accordance with article 38 of the Convention.

2.3. Challenges in implementation

The following steps could further strengthen existing anti-corruption measures:

- Consider adopting legislation to criminalize the passive form of both bribery of foreign public officials and trading in influence (Convention art. 16, para. 2, art. 18, para. b).
- Consider adopting legislation to broaden the scope of the law in relation to: (a) criminalizing bribery in the private sector, extending it to any person who directs or works for a private sector entity (art. 21); and (b) embezzlement in the private sector in order to cover all private sector bodies (art. 22).

- Amend the money-laundering provisions to comply with article 23, in particular subparagraph (1)(a), of the Convention.
- Furnish copies of the law in relation to money-laundering to the Secretary-General of the United Nations (art. 23(2)(d)).
- Set forth in legislation effective, proportionate and dissuasive sanctions against persons, including legal persons, for the commission of Convention offences (art. 26), including increasing the existing penalty of "misdemeanour" for bribery in the private sector (art. 21).
- Consider establishing a longer statute of limitations period in which to commence proceedings for offences under the Convention (art. 29).
- Ensure that sanctions take into account the gravity of that offence and provide the necessary facilities for also women to serve their prison sentences in accordance with international human rights standards (art. 30, para. 1).
- Consider adopting legislation or procedures to disqualify, for a period of time, a person convicted of a Convention offence from holding office in a State-owned enterprise (art. 30, para. 7).
- Endeavour to promote the reintegration into society of persons convicted of offences under the Convention (art. 30, para. 10).
- Consolidate POCA and the Banking Act in relation to freezing, seizure and confiscation in accordance with Convention article 31, ensuring that they apply to all corruption offences.
- Take measures to enable the freezing of an item, including a bank account, by competent authorities for the purpose of eventual confiscation (art. 31, para. 2).
- Adopt legislation or other appropriate measures to provide effective protection for witnesses, victims and experts, in accordance with article 32 of the Convention.
- Consider adopting appropriate measures to provide protection against any unjustified treatment for any person who reports in good faith and on reasonable grounds instances of corruption, in accordance with article 33 of the Convention.
- Take measures to address the consequences of corruption, especially with regard to contracts and concessions (art. 34).
- Ensure that persons or bodies specialized in combating corruption are vested with the necessary independence to carry out their functions effectively and without any undue influence, such as the DFIU (art. 36).
- May consider seeking to enter into agreements or arrangements with other States parties to facilitate assistance of cooperating offenders under article 37(5) of the Convention.
- Consider adopting such measures as may be necessary to establish jurisdiction in relation to the active and passive personality and State protection principles (art. 42, para. 2).

2.4. Technical assistance needs identified to improve implementation of the Convention

The following technical assistance needs were identified:

- Legislative drafting/legal advice with regard to articles 15, 16, 19, 21, 22, 23, 26, 27, 30, 31, 32, 33, 36, 37, 41 and 42.
- Good practices/lessons learned with regard to articles 16, 19, 21, 22, 26, 27, 29, 30, 31, 32, 33, 34, 36, 37, 39, 41 and 42.
- Capacity-building assistance to national authorities with regard to articles 17, 23 and 31.
- On-site assistance by an anti-corruption expert (articles 19 and 23).
- Development of an action plan for implementation (article 19).
- Training for investigators and prosecutors (articles 15, 16 and 17), public awareness-raising/anti-corruption educational programmes, capacity development (articles 17 and 23) particularly in establishing a DFIU position and perhaps a training and attachment to the Fiji FIU, development of a case management system with the necessary training, and an inter-agency coordination mechanism to fighting corruption in the Marshall Islands.

3. Chapter IV: International cooperation

3.1. Observations on the implementation of the articles under review

Extradition; transfer of sentenced persons; transfer of criminal proceedings (arts. 44, 45 and 47)

The procedures regulating extradition to and from the Marshall Islands are contained in the Criminal Extradition Act (CEA). The Marshall Islands makes extradition conditional on the existence of a treaty. The legislation does not impose the requirement of dual criminality in order for an extradition request to be granted. Extradition is permitted where the respective offence in the Marshall Islands is classified as a "felony". The Marshall Islands only has two bilateral treaties currently in place, one with the United States and one with Taiwan Province of China.

A lack of extradition treaties with other States has led to an inability to provide assistance when requested by a number of States including Nauru and Papua New Guinea. The Marshall Islands has not used the Convention as a legal basis for extradition in respect of any Convention-related offences but noted that it would seek to introduce relevant amendments to domestic law in order to facilitate the use of the Convention for these purposes.

The reviewers noted that the limitation on the provision of extradition to felony offences meant that extradition could not be provided in relation to, for example, bribery in the private sector.

The Marshall Islands does not extradite an individual where it believes that the request has been made for the purpose of prosecuting or punishing a person on account of that person's sex, race, religion, nationality, ethnic origin or political opinions.

The Marshall Islands is able to extradite its own nationals under its bilateral treaty with the United States and has done so in the past. However, where possible, domestic prosecution would be attempted first.

In the Marshall Islands, extradition proceedings are conducted in the same manner as criminal proceedings. The general guarantees of fair treatment are contained in section 212 of CEA and as provided for in the Constitution.

The legislation does not contain provisions requiring consultations to take place with requesting States before refusing extradition; however, in practice, such consultations have been conducted. The Marshall Islands is able to take the person sought into custody prior to the extradition hearing if it is considered necessary for the purposes of facilitating the request (s. 214, CEA).

The Marshall Islands does not refuse a request for extradition on the sole ground that the offence is also considered to involve fiscal matters and has granted extradition in relation to tax fraud cases. The authority responsible for extradition and mutual legal assistance (MLA) in the Marshall Islands is the Attorney General.

The bilateral treaty between the Marshall Islands and the United States provides for the transfer of sentenced persons.

Moreover, measures have not been put in place to facilitate the transfer of criminal proceedings to another jurisdiction.

Mutual legal assistance (art. 46)

The procedures regulating MLA are contained in the Mutual Assistance in Criminal Matters Act (MACMA) and CC. The purpose of MACMA is set out in section 403, namely "[t]his Act applies to the Marshall Islands and to any foreign State which may request assistance in criminal matters on a reciprocal basis". In practice, the Marshall Islands seeks to take a flexible approach to the provision of MLA.

MLA confirmed that where consideration is being given to refusing a request, national officials would first consult with the requesting State to consider whether assistance may be granted subject to certain terms and conditions. Where a request for assistance is refused, the Marshall Islands will provide reasons for such a refusal.

The Marshall Islands applies a dual criminality requirement to the provision of MLA, but a flexible conduct-based test is used (ss. 404 and 409, MACMA). However, assistance may be provided in the absence of dual criminality where only non-coercive measures are required to satisfy the request. Furthermore, the Marshall Islands is also flexible in providing informal assistance to other States in the absence of dual criminality. For example, the Transnational Crime Unit (TCU) of the Marshall Islands Police Force spontaneously transfers information to other Pacific TCUs through the Pacific Transnational Crime Network.

The Marshall Islands is able to provide MLA forms as outlined in article 46(3) of the Convention against Corruption, including the execution of search warrants and freezing orders where a court order is obtained. While there is no legal basis for the proactive transmission of information by law enforcement officials from the Marshall Islands, this is conducted in practice on a regular basis.

The Marshall Islands also confirmed that it is able to facilitate the transfer of detained persons for purposes of identification, testimony or otherwise providing assistance in obtaining evidence for investigations, prosecutions or judicial proceedings in relation to Convention offences. The Marshall Islands permits the use of videoconference for hearing a witness where conferencing services are available.

MLA requests are not refused on the grounds of bank secrecy, and effective cooperation has been established between law enforcement authorities, the Banking Commissioner and domestic banks in this regard. Section 408 of MACMA ensures that MLA requests made to the Marshall Islands are required to contain the categories of information covered in Convention article 46(15).

Law enforcement cooperation; joint investigations; special investigative techniques (arts. 48, 49 and 50)

Law enforcement is part of a large number of regional and international cooperation networks, such as the Pacific Transnational Crime Network. Furthermore, cooperation is carried out through bilateral agreements and arrangements, as well as on an ad hoc basis.

The Marshall Islands noted that it had conducted successful joint investigations and prosecutions in the past with the assistance of and cooperation with the Office of the Inspector General of the United States Department of the Interior with respect to fraud offences.

Under the Public Safety Act and CC, law enforcement authorities are authorized to use undercover surveillance. While equipment is available for electronic surveillance including auditor recording, national officials indicated that insufficient training had been provided to facilitate its effective use.

3.2. Successes and good practices

Overall, the following success and good practice in implementing Chapter IV of the Convention is highlighted:

- International law enforcement cooperation by the Marshall Islands, particularly in the region, is commendable (art. 48).

3.3. Challenges in implementation

The following challenges and recommendations were highlighted by the reviewers:

- Consider granting extradition requests that include several separate offences, one of which is extraditable (art. 44, para. 3).
- Ensure that any extradition treaties that the Marshall Islands may conclude with other Member States contain references to Convention offences as being extraditable (art. 44, para. 4).
- Consider adopting additional extradition and MLA agreements in order to allow for extradition with a broader range of States (art. 44, para. 18; art. 46, para. 30).

- Put in place the relevant domestic legislative measures and raise awareness among relevant public officials in order to facilitate the use of the Convention as a legal basis for extradition (art. 44, para. 5).
- Take measures to expedite extradition procedures and consider simplifying the evidentiary requirements for extradition requests in relation to Convention offences (art. 44, para. 9).
- May consider entering into additional agreements or arrangements on the transfer of sentenced persons (art. 45).
- Introduce measures to improve transparency, channels of communication and information sharing between the various authorities in the Marshall Islands so as to allow for more effective responses to MLA requests from other States, as required under the Convention (art. 46, para. 1).
- Notify the Secretary-General of the United Nations of the central authority designated for MLA, as well as the acceptable language for executing MLA requests (art. 46, paras. 13-14).
- Consider the possibility of transferring criminal proceedings to and from a foreign State where it would be in the interests of the proper administration of justice, in particular where several jurisdictions are involved (art. 47).
- Consider taking additional measures to allow for the effective use of special investigative techniques such as surveillance, undercover operations and, where appropriate, electronic surveillance operations, and providing the corresponding training to law enforcement personnel, including for the use of such techniques for international cooperation (art. 50).

3.4. Technical assistance needs identified to improve implementation of the Convention

The following technical assistance needs were identified:

- Training to law enforcement officials, prosecutors and the judiciary on the use of the Convention as a treaty basis for extradition.
- Legal advice with regard to articles 46 and 47.
- Good practices/lessons learned with regard to articles 46, 47, 49 and 50.
- Capacity-building programmes for authorities in relation to international cooperation in criminal matters, for cross-border law enforcement cooperation and for designing and managing the use of special investigative techniques.
- Technological assistance (i.e. establishment and management of databases/information-sharing systems).

United Nations CAC/COSP/IRG/I/4/1/Add.9*

Conference of the States Parties to the United Nations Convention against Corruption

Distr.: General
30 March 2015

Original: English

Implementation Review Group
Sixth session
Vienna, 1-5 June 2015
Item 2 of the provisional agenda**
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* Reissued for technical reasons on 20 April 2015.
** CAC/COSP/IRG/2015/1.

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II. Executive summary

Liechtenstein

1. Introduction: Overview of the legal and institutional framework of Liechtenstein in the context of implementation of the United Nations Convention against Corruption

The Principality of Liechtenstein signed the United Nations Convention against Corruption on 10 December 2003, ratified it on 16 December 2009 and deposited its instrument of ratification on 8 July 2010.

Liechtenstein uses the incorporation system or monist system for the implementation of international treaties. Therefore, the Convention has become an integral part of Liechtenstein's domestic law following its ratification and entry into force on 7 August 2010. Within the hierarchy of norms, the Convention as an international treaty has at least the status of statutory law in the domestic legal order and takes precedence over earlier laws (*lex posterior*).

Liechtenstein is a constitutional hereditary monarchy on a democratic and parliamentary basis. The power of the State is embodied in the Reigning Prince and the People. The Principality forms a monetary and customs union with Switzerland and therefore, a variety of Swiss laws apply in Liechtenstein as well. The criminal law is largely based on Austrian law. This means it is a civil law system with an inquisitorial court procedure.

As a member of the European Economic Area (EEA), Liechtenstein is fully subjected to the European Union anti-money-laundering and counter-terrorist-financing (AML/CFT) framework. Additionally, Liechtenstein is party to international and multilateral organizations and agreements, including the Organization for Security and Cooperation in Europe (OSCE) and the Council of Europe (CoE). Liechtenstein has signed but not yet ratified the CoE Criminal Law Convention against Corruption. It is not a signatory to the CoE Civil Law Convention on Corruption nor to the OECD Foreign Bribery Convention. The most important institutions in the fight against corruption are the National Police and the Office of the Public Prosecutor.

To bring Liechtenstein criminal law fully in line with the obligations of the Convention, the Government has published a white paper (*Vernehmlassungsbericht*) that outlines planned amendments to the Criminal Code and other laws (*Korruptionsstrafrechtsrevision*), which was discussed during the country visit. A draft law is expected for autumn 2015.

2. Chapter III: Criminalization and law enforcement

2.1. Observations on the implementation of the articles under review

Bribery and trading in influence (arts. 15, 16, 18 and 21)

The provision on active bribery of officials is contained in § 307 of the Criminal Code (CC). Liechtenstein law distinguishes between official acts contrary to duty (§ 307(1) CC) and acts not contrary to duty (§ 307(2) CC).

The definition of "public official" (*Beamter*) set out in § 74(4) CC applies to elected officials as well as public officials appointed to positions and persons holding a judicial office (professional judges, lay judges and all persons, who participate in the administration of justice). It does not include Members of Parliament or of Municipal Councils or CEOs of public enterprises.

The active bribery of these latter persons for acts contrary to their duties is nevertheless covered by § 307(1) CC because this provision explicitly includes not only national and foreign officials (art. 16(1) of the United Nations Convention against Corruption) but also Members of Parliament, etc. However, for acts not contrary to their duties, § 307(2) CC only covers national officials and managing employees of a public enterprise. Moreover, § 307(2) CC contains a *de minimis* exemption in that it criminalizes only advantages that are "not merely minor". Finally, an exemption at the end of § 307(2) CC ("unless the perpetrator cannot be faulted for offering, promising or granting that advantage under the circumstances") can be invoked if the advantage was meant to "speed up" the performance of a lawful act. Liechtenstein explained that all these issues would be addressed in the planned reform of the anti-corruption legislation.

The element of "undue advantage" is not defined in the law, but the interpretation of the term includes all material and immaterial rewards and gifts.

Third-party beneficiaries of the advantage are explicitly mentioned and include entities.

Passive bribery of national officials is criminalized in §§ 304, 305, 306 and 306a CC.

Liechtenstein has not implemented article 16(2) of the Convention against Corruption.

Liechtenstein has only partially implemented active bribery in the private sector (to the extent that it amounts to unfair competition, § 4 of the Unfair Competition Act) and not implemented passive bribery in the private sector.

Trading in influence is partially criminalized by § 308 CC, which concerns aspects of passive trading in influence (art. 18(b) of the Convention). However, it envisages a two-person relationship, whereas article 18 of the Convention concerns a three-person relationship.

Money-laundering, concealment (arts. 23 and 24)

§ 165(1) CC criminalizes money-laundering. The money-laundering offence relates to all kinds of property, either obtained directly from the offence or indirectly through substitution ("embodied"). Indirect proceeds (interest) are also covered according to case law. Predicate offences to money-laundering are all crimes (punishable by life or more than three years imprisonment) and a series of designated misdemeanours (less than three years imprisonment). Therefore, all Convention offences are predicate offences, with the exception of small-scale embezzlement.

Attempt (as well as any participation in an attempt) is criminalized for all offences by § 15 CC, including money-laundering. § 12 CC (Treatment of all participants as offenders) covers aiding and abetting, facilitating and counselling.

As long as Liechtenstein has jurisdiction over the money-laundering activity itself *ratione loci*, it is irrelevant where the predicate offences are committed, provided that the acts would constitute a domestic predicate offence. Liechtenstein even assumes jurisdiction over the money-laundering conduct in another country if the predicate offence has been committed in Liechtenstein (§ 64, para. 1, 9 CC), even in the absence of dual criminality. The offender himself may also be the perpetrator of the predicate crime, thus self-laundering is also a criminalized conduct.

Concealment is criminalized by the offence of handling stolen goods (§ 164 CC).

Embezzlement, abuse of functions and illicit enrichment (arts. 17, 19, 20 and 22)

The CC contains various criminal offences which criminalize embezzlement in both the public and private sectors, in particular §§ 133, 153, 302 and 313 CC.

Article 19 of the Convention against Corruption is implemented through the provisions of § 302 CC.

Liechtenstein stated that due to constitutional principles (presumption of innocence, reversal of burden of proof), it has not criminalized illicit enrichment but has considered introducing the offence.

Obstruction of justice (art. 25)

Obstruction of justice (art. 25(a) of the Convention) is an offence against the administration of justice (§§ 288 and 289 CC) or an offence against the reliability of documents and of evidence (§§ 293 and 295 CC). In addition to that, such acts are also considered as coercion (§§ 105 and 106 CC). The provisions listed do not address "undue advantage to induce false testimony, etc."

The obstruction of the exercise of duties by public officials is criminalized by § 269 CC (Resistance to State authorities) and § 270 CC (Assault of an official), although these provisions do not include intimidation.

Liability of legal persons (art. 26)

The Criminal Code was revised in 2010 and a new section (§§ 74a to 74g CC) on the liability of legal persons was inserted. Apart from the criminal sanctions pursuant to § 74b CC, other administrative and civil remedies are available for legal persons found guilty of committing a Convention offence (e.g. dissolution of the company, § 971(1) No. 5 of the Companies Code [*Personen- und Gesellschaftsrecht*]). However, there is no debarment or blacklisting procedure.

The liability of the legal person and the liability of managers or employees for the same act do not exclude each other. Legal persons held liable are subject to sanctions, including monetary sanctions according to §§ 74b and 74c CC. The maximum penalty is 2.7m CHF.

Participation and attempt (art. 27)

§ 12 CC covers aiding and abetting, facilitating and counselling. It states that a criminal offence is committed also by anybody who abets another person to commit the offence or who contributes to its perpetration in any other way.

Attempt (as well as any participation in an attempt) is criminalized for all offences by § 15 CC. The mere preparation of a corruption offence is not criminalized.

Prosecution, adjudication and sanctions; cooperation with law enforcement authorities (arts. 30 and 37)

A peculiarity of the judicial system is that the prosecutor does not ask the court for a specific sentence but leaves this to the discretion of the court. Judges have the discretion to impose the sentence they deem most appropriate under the circumstances. The range of punishment for corruption crimes, including aggravating and mitigating circumstances, makes it possible to take into account the gravity of the relevant offences.

According to the Liechtenstein Constitution, the Reigning Prince enjoys immunity. No immunity is given to officials or judges. MPs only enjoy the very limited immunity for statements and votes in Parliament. Otherwise, only the arrest of an MP during the meeting period of Parliament requires consent of Parliament.

The principle of legality applies in Liechtenstein criminal procedure, i.e., the Office of the Public Prosecutor must in principle prosecute all criminal acts *ex officio*.

§§ 131(5), 138 to 140, and 142(4) of the Liechtenstein Criminal Procedure Code (CPC) govern release pending trial. In accordance with § 46 CC, the time frame for conditional (early) release from imprisonment in Liechtenstein is based on the specific sentence determined in the judgement. Alternatives to pretrial detention are available.

Article 30(6) of the Convention is implemented through § 54 SEA (State Employees Act), §§ 61 to 63 RDG (*Richterdienstgesetz*) and § 51 StAG (*Staatsanwaltschaftsgesetz*), which allows suspension and reassignment.

Pursuant to § 27 CC, an official sentenced by a domestic court to an imprisonment of more than one year for one or more wilfully committed offences shall be stripped of his office.

Disciplinary law permits disciplinary proceedings irrespective of criminal prosecution.

The legislation promotes the reintegration into society of persons convicted of offences. To support reintegration, probation assistance may be ordered (§§ 50 and 51 CPC).

While there is no plea bargaining in Liechtenstein, according to § 22a to 22n CPC, the prosecution can drop charges and e.g., only impose a fine in return for cooperation (*Diversion*). Liechtenstein also encourages perpetrators of offences to cooperate with law enforcement by offering mitigation of sentences (§ 41 in conjunction with § 34(1)(15) to (17) CC). Full immunity is not provided for in Liechtenstein due to the specific design of the principle of legality and the requirement of equal treatment.

Protection of witnesses and reporting persons (arts. 32 and 33)

Liechtenstein law provides judicial protection of witnesses like the right to refuse testimony, measures to keep the identity of witnesses partially or completely confidential in proceedings (§ 119a CPC) and the use of communication

technologies (§ 115a(2) CPC). There are also provisions on the extrajudicial protection of witnesses, e.g., temporary housing at a secure location, the establishment of a new identity, relocation to a new place of residence (including relocation abroad), finding a new job, and securing a livelihood. After a recent amendment of the National Police Act about witness protection, the witness protection also covers relatives and other persons close to the witness. The provisions also apply to victims insofar as they are witnesses. Victims have the right to present their views and concerns at any stage of criminal justice proceedings.

Pursuant to a recommendation by the Council of Europe Group of States against Corruption (GRECO), it is planned to introduce "whistle-blower" provisions in the State Employees Act, which entail an obligation for public sector employees to report suspicions of corruption and other offences immediately to the director of their office and enhance protection for reporting persons against unjustified retaliation measures. There is no whistle-blower protection in the private sector.

Freezing, seizing and confiscation; bank secrecy (arts. 31 and 40)

Under Liechtenstein law, there are three different concepts of final deprivation of property: (i) deprivation of enrichment (§ 20 CC); (ii) forfeiture (§ 20b CC); and (iii) preventive confiscation of instrumentalities (§ 26 CC). According to § 20 CC, the person concerned is sentenced to payment of an amount of money equal to the wrongful enrichment. § 20 CC provides for the possibility of confiscating the value of the gains from any person (including legal persons) who illegally profits from a criminal act of another person. The extent of the enrichment is measured by the so-called "*Netto-Prinzip*" (after-deduction principle), which means that the expenditures for gaining the proceeds are deducted.

According to § 20b CC, assets at the disposal of a criminal organization (§ 278a) or a terrorist group (§ 278b) or that have been made available or collected as a means of terrorist financing (§ 278d) shall be declared forfeited. Assets are also subject to forfeiture if they are involved in money-laundering (§ 20b (2)(1) CC).

Liechtenstein has also adopted a property-based confiscation model for confiscating instrumentalities. However, instrumentalities will be confiscated only if they endanger the safety of persons, morality or the public order (§ 26 CC).

Evidence and objects subject to confiscation (§ 26 CC) may be seized by judicial order (§ 96 CPC). Assets subject to deprivation of enrichment under § 20 CC or to forfeiture under § 20b CC may be frozen pursuant to § 97a CPC until a final judicial decision has been made.

There are legislative provisions for the process of asset forfeiture and the management of confiscated assets in §§ 253 and 253a CPC.

Intermingling of assets does not prevent deprivation of enrichment pursuant to article 20 CC. If the amount of enrichment cannot be determined or only with disproportionate effort, the court may specify the amount to be deprived at its discretion.

§ 20(2) and (3) CC allow deprivation of assets where there is a connection with continued criminal activity or with membership in a criminal organization and the lawful origin of the advantage cannot be demonstrated. § 20(4) CC provides for

deprivation of enrichment of a third party only if that person has been enriched directly and unjustly.

The obligation to maintain banking secrecy does not apply vis-à-vis the criminal court in connection with criminal proceedings (article 14(2) of the Banking Act). In order to access documents, a court order is needed. However, according to § 14(2) Banking Act, banking secrecy is no valid ground to refuse testimony before a criminal court. Therefore, no lifting of bank secrecy is needed to hear testimony of a bank employee on a specific transaction.

Statute of limitations; criminal record (arts. 29 and 41)

The limitation periods for offences are staggered depending on the applicable penalty (§ 57(3) CC). For corruption offences, they will be three or five years, depending on the offence. The statute of limitation applies as soon as the punishable activity is concluded or the punishable conduct has come to an end. The time during which prosecution cannot be initiated or continued according to a legal provision or during which criminal proceedings are pending in court against the perpetrator because of the offence are not included in the limitation period.

Any previous conviction in Liechtenstein or abroad, even outside the European Union/European Economic Area, may be taken into account by the competent court when sentencing.

Jurisdiction (art. 42)

Liechtenstein has established territorial jurisdiction and flag State jurisdiction (§ 62, 63 CC). Liechtenstein applies the active personality principle and it partially applies the passive personality principle (acts against Liechtenstein officials; acts by Liechtenstein citizens against Liechtenstein citizens, § 64 CC). Extraterritorial jurisdiction has been established for money-laundering, as well as for prosecution in lieu of extradition, § 64, 65 CC.

Consequences of acts of corruption; compensation for damage (arts. 34 and 35)

According to § 879(1) of the General Civil Code (ABGB), contracts or contract clauses governing corrupt acts are considered under existing law to be null and void due to their violation of a law. In public law, article 106 of the National Administration Act permits an administrative act or a decree to be declared null and void. There is no debarment or blacklisting procedure but a bidder has to submit information on his criminal record (natural persons).

All victims who have suffered damage as a result of a crime have the right to initiate legal proceedings in order to obtain compensation (§ 1295 ABGB).

Specialized authorities and inter-agency coordination (arts. 36, 38 and 39)

Liechtenstein does not have a specialized anti-corruption agency. Instead, the national police is the authority responsible for investigating corruption. However, there are specialized corruption investigators within the criminal police. The specialized corruption investigators, who are also responsible for internal investigations against police officers, consist of the Chief of the Criminal Police, the Head of the Financial Crimes Unit and his deputy. The Financial Crimes Unit is part

of the Crime Investigation Division (CID), which has nine staff members. They are supervised by the Chief of the Criminal Police.

The specialized corruption investigators regularly take part in events on the topic in Switzerland and maintain contact with the Federal Bureau of Anti-Corruption (BAK) in Austria.

The corruption investigators are authorized by the Government to communicate directly with the Office of the Public Prosecutor in corruption cases. They do not have to follow the usual official channels of communication. The status of prosecutors is laid down in the Act on the Office of the Public Prosecutor. According to the Act, prosecutors cannot be instructed by the Ministry of Justice to drop prosecution. The Office of the Public Prosecutor comprises seven prosecutors. There are no specialized anti-corruption prosecutors.

The Financial Intelligence Unit (FIU) is an administrative-type financial intelligence unit; it does not investigate cases. It was established in 2001 and is a member of the Egmont Group. Pursuant to the Due Diligence Act, persons subject to due diligence shall refrain from all actions that might obstruct or interfere with any order by the court at most until the conclusion of five business days from receipt by FIU of the suspicious transaction report, unless such actions have been approved in writing by FIU.

§ 53 ff CPC governs cooperation between domestic authorities and officials. Article 25(1) of the National Administration Act also sets out a mutual obligation of assistance for administrative authorities and courts.

All relevant financial associations have quarterly meetings with the Financial Markets Authority (FMA) as well as FIU.

It is planned that FMA will soon operate a whistle-blower website.

There is no reporting obligation — but a reporting right — for citizens (§ 55 CPC).

2.2. Successes and good practices

Overall, the following successes and good practices in implementing chapter III of the Convention are highlighted:

- Liechtenstein assumes jurisdiction over money-laundering conducted in another country if the predicate offence has been committed in Liechtenstein (§ 64, para. 1, 9 CC), even in the absence of dual criminality (art. 23(2)(c), 42(2)(c) of the Convention).
- The limited scope of immunities granted by Liechtenstein (art. 30(2) of the Convention).
- The creation of a specialized unit within the criminal police despite the small size of the country (art. 36 of the Convention).

2.3. Challenges in implementation

While noting Liechtenstein's efforts in the field of anti-corruption, a number of challenges in implementation and/or grounds for further improvement were identified and it was recommended (depending on the mandatory or optional nature

of the relevant requirements of the Convention against Corruption) that Liechtenstein:

- Swiftly adopt and implement the planned amendments to the criminal code and other laws (*Korruptionsstrafrechtsrevision*) as envisaged in the white paper; in this sense, it is particularly recommended that the bill to be prepared endorses the recommendations below.
- Concerning article 15, 16 and 21 of the Convention:
  - Criminalize active bribery of Members of Parliament, Members of a Municipal Council, and managing employees and staff members of a public enterprise also for acts not contrary to duty.
  - Criminalize active bribery of foreign officials and officials of international organizations also for acts not contrary to duty ("facilitation payments").
  - Consider criminalizing passive bribery of foreign officials and officials of international organizations.
  - Abolish or significantly lower the value of the *de minimis* exemptions.
  - Abolish the "no fault" exemption at the end of Section 307 (2) CC.
  - Consider criminalizing passive bribery in the private sector; consider fully criminalizing active bribery in the private sector.
- Concerning article 18 of the Convention, consider comprehensively criminalizing active and passive trading in influence.
- Consider the introduction of a specific offence to fully implement the mandatory criminalization requirements of article 25(a) of the Convention.
- Concerning article 26 of the Convention, it was recommended to reconsider if the existing maximum penalty would be a sufficiently dissuasive deterrent sanction for larger enterprises and banks.
- Concerning article 31 of the Convention, it was recommended to:
  - Amend the law according to the white paper, including a switch to the so-called "*Brutto-Prinzip*", in order to bring Liechtenstein law fully in compliance with article 31(1)(a).
  - Amend the law according to the envisaged § 19a CC, in order to bring Liechtenstein law fully in compliance with article 31(1)(b).
- Concerning article 33 of the Convention, Liechtenstein is encouraged to consider the introduction of whistle-blower protection in the private sector.

3. Chapter IV: International cooperation

3.1. Observations on the implementation of the articles under review

Extradition; transfer of sentenced persons; transfer of criminal proceedings (arts. 44, 45 and 47)

Liechtenstein can directly apply self-executing provisions of the Convention.

The rules on extradition are laid down in chapter II of the Mutual Legal Assistance Act of 15 September 2000 (MLAA).

Extradition can be granted for the prosecution of acts that are punishable under the law of the requesting State by a deprivation of liberty of more than one year and that are subject to a deprivation of liberty of more than one year under Liechtenstein law. Liechtenstein does not make any exceptions to the principle of dual criminality. Article 11(3) MLAA explicitly allows extradition for connected offences as laid down in article 44(3) of the Convention against Corruption. Convention offences are not considered political offences.

Liechtenstein does not make extradition conditional on the existence of a treaty. Extradition can also be granted on the basis of reciprocity. Concerning extradition requests to and from States parties to the Convention, the Convention can be used as the legal basis for dealing with such a request. All Convention offenses fulfil the minimum penalty threshold for extradition stated in article 11 MLAA (one year imprisonment), except for small-scale cases of embezzlement.

Simplified extradition procedures are possible according to article 32 MLAA in case of consent of the person. Provisional custody and detention pending extradition is possible under §§ 127, 129 CPC, article 29 MLAA.

Extradition of nationals is not admissible pursuant to article 12, para. 1 MLAA, except if the person has given his/her express consent. In that case, the extradition is not conditional on his/her return to serve the sentence in Liechtenstein. The principle of *aut dedere, aut judicare* and jurisdiction to prosecute offences committed abroad by nationals is provided for in § 65 para. 1 CC. Article 64 MLAA provides the basis for the enforcement of foreign court decisions.

All procedural rights and guarantees are applicable during the extradition process (art. 9 MLAA). According to article 19(3) MLAA, extradition is not permissible if the request has been made for the purpose of prosecuting or punishing a person on account of that person's sex, race, religion, nationality, ethnic origin or political opinions. Liechtenstein will not refuse a request for extradition on the sole ground that the offence is also considered to involve fiscal matters (art. 15 MLAA).

Opportunity to communicate before refusing extradition is used frequently both by the Princely Court and the authority responsible for extradition in Liechtenstein. Liechtenstein is a Member State to the European Convention on Extradition (ETS No. 24) and its Additional Protocol (ETS No. 86). It has concluded several treaties on extradition, including with the United States of America (1936) and Belgium (1938).

Liechtenstein has ratified the Convention of the Council of Europe on the Transfer of Sentenced Persons (ETS No. 112) and its Additional Protocol (ETS No. 167).

Transfer of proceedings is possible according to article 60 and 74 MLAA and multilateral treaties (European Convention on the Transfer of Proceedings in Criminal Matters, ETS No. 73).

Mutual legal assistance (art. 46)

Like extradition, mutual legal assistance (MLA) is regulated by the Mutual Legal Assistance Act of 15 September 2000 (MLAA) and bilateral and multilateral

treaties, including the Council of Europe Convention on Mutual Assistance in Criminal Matters of 20 April 1959. MLA can be afforded in relation to offences committed by legal persons.

According to the MLAA, Liechtenstein can afford all the forms of legal assistance listed in article 46(3) of the Convention against Corruption. Article 54a MLAA explicitly regulates spontaneous transmission of information, which is also used in practice. The confidentiality of the information provided will not prevent Liechtenstein from disclosing it when such information is exculpatory for an accused person. In criminal procedures and in MLA cases in criminal matters, bank secrecy is not a ground for refusing testimony or refusing the provision of documents requested. The relevant rules set out in the CPC apply also to MLA.

Article 51(1) MLAA normally requires dual criminality. However, Liechtenstein can render MLA when it is consistent with the basic concepts of its legal system. In this respect the Convention is self-executing regarding requests not involving coercive measures. Requests are not refused on the sole ground that they involve matters of a *de minimis* nature.

The transfer of a person being detained or serving a sentence for the purpose of testimony is possible according to articles 53, 54, 59, 73 MLAA, 38 CC and the CoE Convention on the Transfer of Sentenced Persons. Liechtenstein also permits hearings to take place by videoconference.

The Ministry of Justice of Liechtenstein serves as the central authority with respect to all international mutual legal assistance in criminal matters. MLA requests and any related communications can be directly transmitted to the central authority. Requests through INTERPOL are accepted. Requests and the related documents have to be submitted in German or English. Nothing in the law excludes accepting requests made orally in urgent circumstances. The form and contents of requests for MLA are governed by article 56 MLAA. The rule of specialty is laid down in article 52(4) MLAA. Requests can be treated confidentially, but before sending objects or documents to the requesting State the entitled parties must first be granted a fair hearing (art. 52(4) MLAA).

MLA may be refused if the request violates the *ordre public* or other essential interests of Liechtenstein. MLA will be refused for exclusively fiscal offences (art. 15 MLAA). For requests that do not only involve fiscal matters but also non-fiscal offences, MLA can be granted. If MLA is not granted, the requesting State will be informed and grounds for refusal will be indicated (art. 57(1) MLAA). The only reason for postponing MLA is the need of objects or documents for a pending domestic proceeding. If it is possible to grant assistance subject to concrete terms and conditions, the requesting State party will be consulted before refusing a request or postponing its execution.

Safe conduct is granted on the basis of article 53 MLAA. Normally, all costs are borne by Liechtenstein (art. 5 MLAA). Documents in the public domain can be provided upon request. Confidential documents or information can be provided to the requesting State if the conditions of articles 52 and 55(4) MLAA are met.

Law enforcement cooperation; joint investigations; special investigative techniques (arts. 48, 49, 50)

Law enforcement authorities cooperate through organizations and networks such as INTERPOL, Europol, Schengen Information System/SIRENE, and the Global Focal Point Initiative established by StAR and INTERPOL. The National Police have also a close and good cooperation with different liaison officers (e.g. with the FBI and the Royal Canadian Mounted Police). Liechtenstein's FIU is a member of the Egmont Group and exchanges information with its foreign counterparts through the Egmont Secure Web. The FIU provides all information it keeps in its own databases to foreign counterparts. The only caveat is that the FIU (which is not a law enforcement agency) can share internationally only information that it holds domestically. Banking and account information that are not held by the FIU can only be provided to foreign authorities through the MLA channel.

Evidence can be made available for investigation and evaluation purposes pursuant to article 52 MLAA. INTERPOL purple notices are used to exchange information on modi operandi, objects, devices and concealment methods used by criminals. Since the beginning of 2014 Liechtenstein has been part of Europol and its network of liaison officers. The current as well as the new (not yet in force) Trilateral Cooperation Treaty between Liechtenstein, Switzerland and Austria also foresees the possibility to exchange liaison officers if necessary.

Liechtenstein can establish joint investigations in the framework of INTERPOL, Europol and (soon) the Trilateral Cooperation Treaty, as well as on a case-by-case basis, when needed.

Special investigation methods are governed by §§ 103 to 104c CPC (surveillance of communication, observation, covert investigation, bogus transactions/controlled delivery). So far, these techniques have been used primarily in cases of drug trafficking or human trafficking.

The Trilateral Cooperation Treaty envisages special investigative techniques. Articles 35 and 35a of the Police Act allow special investigative methods within the framework of international police assistance with all foreign law enforcement authorities that have the same scope of responsibilities as the National Police. Controlled delivery is regulated in § 104c(2) CPC.

3.2. Successes and good practices

- The comprehensive and coherent legal framework on international cooperation in criminal matters, which regulates in a detailed manner all forms of international cooperation used by the Liechtenstein authorities.
- By prohibiting Liechtenstein authorities from making an MLA request if they could not comply with an identical request made by another State, article 3(2) MLAA contains an implicit guarantee of reciprocity to the requested State, which might facilitate the rendering of MLA.

3.3. Challenges in implementation

With regard to international cooperation, it is recommended that Liechtenstein:

- Take appropriate measures to enable its competent law enforcement authorities to cooperate on the international level in conducting inquiries concerning the movement of proceeds of crime or property derived from the commission of offences covered by the Convention, when such proceeds are held in a banking institution.

United Nations CAC/COSP/IRG/I/4/1/Add.10*

Conference of the States Parties to the United Nations Convention against Corruption

Distr.: General
31 March 2015

Original: English

Implementation Review Group
Sixth session
Vienna, 1-5 June 2015
Item 2 of the provisional agenda**
Review of implementation of the United Nations Convention against Corruption

Executive summary

Note by the Secretariat

Addendum

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* Reissued for technical reasons on 28 April 2015.
** CAC/COSP/IRG/2015/1.

V.15-02140 (E) 280415 290415

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II. Executive summary

Kiribati

1. Introduction: Overview of the legal and institutional framework of Kiribati in the context of implementation of the United Nations Convention against Corruption

The Republic of Kiribati acceded to the Convention on 27 September 2013 and it entered into force for Kiribati on the same date. Kiribati deposited its instrument of ratification with the Secretary-General of the United Nations on 27 September 2013.

Kiribati is a parliamentary democracy. Kiribati's legal system is comprised of Acts of Parliament, certain British statutes, common law and customary law. The Head of State and of Government is Te Beretitenti (President). The House of Assembly (Maneaba ni Maungatabu) is a unicameral House of Assembly.

The judicial branch of Kiribati is comprised of the Court of Appeal, High Court and magistrates' courts. Judges and magistrates at all levels are appointed by Te Beretitenti. Part IX of the Criminal Procedure Code provides for appeals by way of petition from the magistrates' courts to the High Court.

Relevant institutions in the fight against corruption include the Office of the President, the Attorney General, the Office of the Director of Public Prosecutions (DPP), the Commissioner of Police, the Financial Intelligence Unit, the Department of Prisons, the Auditor General, Ministry of Foreign Affairs and the Ministry of Finance and Economic Development. Meetings were also held with the Chamber of Commerce.

2. Chapter III: Criminalization and law enforcement

2.1. Observations on the implementation of the articles under review

Bribery and trading in influence (arts. 15, 16, 18 and 21)

Active and passive bribery of public officials is criminalized in the Penal Code 1977 (hereinafter, PC), chapter 67, in particular sections 85-87 and 366-369. There have been no bribery cases in the last five years.

The bribery of foreign public officials and officials of public international organizations is not criminalized.

Kiribati relies on the general bribery provisions to pursue cases of trading in influence. The abuse of "supposed influence" is not specifically covered.

Bribery in the private sector is not criminalized.

Money-laundering, concealment (arts. 23 and 24)

Money-laundering is criminalized in sections 6, 12 and 13 of the Proceeds of Crime Act 2003 (POCA). There have been no prosecutions to date relating to money-laundering. Attempts and conspiracies, as well as incitement, to commit money-laundering are covered under the PC (sections 371-378). Kiribati adopts a "serious offences" threshold to defining predicate offences that covers offences punishable by imprisonment for 12 months or longer or a fine of over AU$ 500.

This would exclude some United Nations Convention against Corruption offences that are misdemeanours (e.g., under sections 90 and 367, PC). Self-laundering is not precluded (section 12(5), POCA).

Concealment is criminalized (sections 306-307, PC).

Embezzlement, abuse of functions and illicit enrichment (arts. 17, 19, 20 and 22)

The general provision for theft is section 251, PC, and the penalty could constitute a felony (section 254). Frauds and breaches of trust by persons employed in the public service are covered (section 121), as well as larceny and embezzlement by clerks or servants (section 266) and conversion (sections 271, 297). Case law on embezzlement by clerks or servants contrary to section 266 was provided.

The same provisions also apply to embezzlement in the private sector.

Section 90, PC covers abuse of office and case law was provided.

Illicit enrichment is not criminalized.

Obstruction of justice (art. 25)

Obstruction of justice is criminalized principally in sections 95, 108, 110, 115 and 120 PC. The provisions on interference with witnesses are limited to acts of deceit and conspiracy (sections 108 and 110, PC). Statistics on resisting arrest and obstructing police officers were provided. There are no reported cases of interference with witnesses.

Liability of legal persons (art. 26)

Kiribati recognizes the criminal liability of legal persons, and fines, in addition to or instead of punishment, may be imposed (sections 26 and 29, PC). There have been no investigations or prosecutions of legal persons.

Participation and attempt (art. 27)

Participation in offences is criminalized (section 21, PC on principal offenders, section 23 on counselling another to commit an offence, sections 376-378 on conspiracy, as well as sections 379-380 on accessories after the fact).

Sections 371-373 cover the attempt to commit offences, section 374 addresses soliciting and inciting others to commit offence in the Gilbert Islands or elsewhere and section 375 covers neglect to prevent felony. Preparation is not specifically addressed but in practice, the act of preparing for an offence would arguably fall under either conspiracy to commit an offence (section 376), counselling another to commit an offence (section 23) or attempt (sections 371-372).

Prosecution, adjudication and sanctions; cooperation with law enforcement authorities (arts. 30 and 37)

The determination of sanctions generally takes into account the gravity of offences.

According to article 76 of the Constitution, the Parliament may determine the privileges and immunities of its members, who enjoy immunities from arrest and attendance in any civil cause or matter (section 7, Privileges, Immunities and

Powers of the Maneaba ni Maungatabu Act 1986). The immunity of members of Parliament has been lifted (Dr. Tetaua Taitai v. Speaker of Parliament). The President does not have immunity in criminal matters.

The Attorney General of Kiribati enjoys broad prosecutorial discretion. In practice, the discretionary legal powers are often used by the prosecutors, subject to article 42 of the Constitution, which addresses the powers and mandate of the Attorney General.

Sections 106-109 of the Criminal Procedure Code (chapter 17) address conditions on release pending trial or appeal. Parole is regulated principally under the Parole Board Act 1986, and no inmates charged with corruption-related offences have been released on parole in the past five years.

Relevant provisions with respect to the disciplinary measures against public officials accused or convicted of criminal misconduct are found in the National Conditions of Service (NCS). Accused persons have been suspended from public office pending criminal proceedings: Karianako Kamaua (civil case).

Kiribati has established a prisoner reintegration programme, which covers life skills and vocational training. There is a reported need for Kiribati to overhaul the Prisons Ordinance.

Common law principles provide for the courts and the prosecutors to exercise their discretion in considering mitigating punishment (i.e., guilty pleas, cooperation with the investigating authorities). Immunity from prosecution may only be granted by the DPP in the case of cooperating co-defendants, although the process is not regulated by law.

Protection of witnesses and reporting persons (arts. 32 and 33)

Kiribati has not adopted measures to provide protection from potential retaliation or intimidation for witnesses and experts who give testimony or provide evidence, or for their relatives and other persons close to them. In practice, protections could be granted by the police for prosecution witnesses, including the payment of per diems and physical protection.

Kiribati has not adopted measures to protect reporting persons and whistle-blowers in cases involving Convention against Corruption offences (art. 33).

Freezing, seizing and confiscation; bank secrecy (arts. 31 and 40)

Sections 6 and 21 POCA principally cover the confiscation of proceeds and instrumentalities of crime, subject to a "serious offences" threshold, in respect of persons convicted of the offence. Provisions on search and seizure are covered (i.e., sections 43-44, 50-51, 56, 58, 93-95, POCA). There have been no cases of confiscation in corruption related matters. Basic measures on the administration of frozen, seized and confiscated assets are in place, including through the appointment by the Attorney General of a person to administer property forfeited or subject to a restraining order (section 120, POCA). The Court has jurisdiction to grant access to bank, financial or commercial records based on the merit of the application.

There is one foreign bank operating in Kiribati, in which the Government holds a 25 per cent interest. Limited procedures are available under POCA that could be used for the lifting of bank secrecy.

Statute of limitations; criminal record (arts. 29 and 41)

There is no statute of limitations in respect of criminal matters. Under the Criminal Procedure Code, the limitation period applies only to offences which carry a maximum penalty of $100 or 3 months imprisonment (i.e., not Convention against Corruption offences). The Court also has discretion to dismiss cases for undue delay.

It is unclear on what basis courts may consider previous foreign convictions as there has been no experience in this.

Jurisdiction (art. 42)

Territorial jurisdiction is recognized in line with the Convention (arts. 5, 132, 53 PC). Kiribati assumes jurisdiction over offences on board vessels and aircraft as an extension of the territoriality principle, provided the conduct occurs within its territorial boundaries. Kiribati has not established the active or passive nationality principles.

Consequences of acts of corruption; compensation for damage (arts. 34 and 35)

Pursuant to common law principles, any contract could be deemed void or be annulled. Persons who have been convicted of criminal activity are precluded from participating in public contracts under the Procurement Act (section 6).

There is nothing preventing a person from undertaking civil proceedings in order to seek compensation for corruption.

Specialized authorities and inter-agency coordination (arts. 36, 38 and 39)

The key authorities include the Attorney General's Office (Director of Public Prosecutions (DPP) and the Solicitor General's Office), Kiribati Police Anti-Corruption Unit and the Financial Intelligence Unit (FIU). The independence of the Attorney General's Office is outlined in article 42 of the Constitution. Although the DPP is not supposed to be subject to any external interference, it was reported that in practice this is not always the case. There are 2 prosecutors excluding the DPP. The Solicitor General's Office provides legal advice to the Government, including on corruption-related matters, and has eight staff members, excluding the Solicitor General. The powers and mandate of the FIU are outlined in section 17, POCA. The budgets of each department or entity are controlled by the Head thereof.

There are limited measures to encourage cooperation among national authorities and with the private sector. In particular, the Cabinet has approved the creation of an anti-corruption committee comprising the Office of the President, DPP, police, Customs and Immigration and the Auditor General, although this committee is not yet functional. Cooperation with the private sector is mainly exercised through the oversight function of the FIU and the outreach activities of the Parliament and the Chamber of Commerce. Few cases of implementation were available.

2.2. Successes and good practices

Overall, the following success and good practice in implementing chapter III of the Convention is highlighted:

- The absence of a statute of limitations in respect of criminal matters.

2.3. Challenges in implementation

- Criminalize bribery of foreign public officials and officials of public international organizations, and consider establishing the passive version of the offence.
- Consider adopting a specific offence of trading in influence that would cover the abuse of supposed influence.
- Consider establishing the offence of illicit enrichment.
- Consider criminalizing bribery in the private sector.
- Ensure that all Convention against Corruption offences qualify as predicate offences for purposes of money-laundering and furnish copies of legislation to the United Nations.
- Strengthen measures to criminalize the interference with witnesses who provide evidence or give testimony (art. 25(a)).
- Adopt measures to strengthen the independence of the DPP.
- The reviewers welcome efforts to overhaul the Prisons Ordinance, to modernize and streamline existing measures and strengthen the prisoner reintegration programme.
- Consider establishing relevant provisions requiring that an offender demonstrate the lawful origin of alleged criminal proceeds.
- Adopt measures to provide effective protection from potential retaliation or intimidation for witnesses and experts who give testimony concerning offences established in accordance with this Convention and, as appropriate, for their relatives and other persons close to them, establish evidentiary rules and consider entering into relocation agreements (art. 32). Also ensure the protection of victims in line with article 32(4) and (5).
- Consider adopting measures to protect reporting persons and whistle-blowers in cases involving offences under this Convention (art. 33).
- Strengthen independence of relevant law enforcement agencies, in particular the FIU, as well as available resources of the agencies, in particular the Attorney General's Office.
- There is a need for capacity-building to strengthen investigative skills of relevant law enforcement agencies, in particular the police, including asset tracing and seizure.
- Establish provisions to protect cooperating offenders (art. 37(4)).
- Increase awareness-raising on corruption in the communities.

- Strengthen procedures for lifting bank secrecy, including through the adoption of legislative measures.
- Clarify the extraterritorial jurisdiction on board vessels and aircraft where the conduct occurs outside its territorial boundaries and consider establishing the active and passive nationality principles (art. 42(2)(a) and (b)).

2.4. Technical assistance needs identified to improve implementation of the Convention

- Legislative drafting/legal advice with regard to articles 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 30, 33 and 42.
- Good practices/lessons learned with regard to articles 20, 21, 22, 23, 30, 31, 32, 33, 35, 36, 37, 38, 39 and 42.
- Capacity-building assistance to national authorities with regard to articles 15, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 30, 31, 32, 35, 36 and 37.

3. Chapter IV: International cooperation

3.1. Observations on the implementation of the articles under review

Extradition (art. 44)

Extradition is governed by the Extradition Act, which applies to Commonwealth countries, Pacific Island countries and comity countries. A "backing of warrants" procedure is in place for Pacific Island countries (section 26). Kiribati does not make extradition conditional on the existence of a treaty. However, it can apply bilateral and multilateral treaties like the Convention against Corruption. Kiribati also subscribes to the Commonwealth (London) Scheme on Extradition. Extradition matters in Kiribati are under the responsibility of the Minister for Foreign Affairs.

Extradition is subject to dual criminality and is limited to the extent that not all offences under the Convention have been criminalized.

The minimum term of imprisonment or other deprivation of liberty of one year for an offence to be extraditable covers most but not all Convention offences.

Kiribati could consider the Convention as the legal basis for extradition, although there has been no experience in its application.

In the last five years, no extradition requests have been received. One request was sent to Fiji (murder-related), and two people were then extradited to Kiribati.

Political offences are exempted from extradition under the Extradition Act (section 6). The nationality of the requested person is a permissive ground for refusal (section 19(2)(b), Extradition Act). The *aut dedere aut judicare* obligation is addressed.

The issues of fair treatment or discriminatory purpose have not been invoked to date.

A duty to consult with requesting States before refusing extradition is not specified in the Extradition Act but followed in practice.

Transfer of sentenced persons; transfer of criminal proceedings (arts. 45 and 47)

As a member of the Commonwealth, Kiribati could, in principle, rely on the Scheme for the Transfer of Convicted Offenders within the Commonwealth, but this has not been used to date. There have been no case examples of prisoner transfer.

There is no law or practice on the transfer of criminal proceedings.

Mutual legal assistance (art. 46)

The Mutual Assistance in Criminal Matters Act (MACMA) provides the legal basis for mutual legal assistance (MLA). Kiribati does not make MLA conditional on the existence of a treaty. As a member of the Commonwealth, Kiribati could, in principle, rely on the Scheme relating to Mutual Assistance in Criminal Matters within the Commonwealth, although there has been no experience in its application. The Central Authority for MLA in Kiribati is the Attorney General. However, requests would normally be received and sent through diplomatic channels. The Central Authority would then analyse and transmit an incoming request to competent domestic authorities for execution.

The absence of dual criminality is a permissive ground for refusal (section 12, MACMA). Accordingly, dual criminality may be dispensed with at the discretion of the Attorney General, who would generally exercise this discretion to provide non-coercive assistance wherever possible. MLA is limited to the extent that not all offences established under the Convention have been criminalized.

In the last five years, no MLA requests have been received and none have been sent. However, Kiribati is currently in the process of drafting two MLA requests (corruption-related).

Kiribati recognizes grounds for refusal in line with the Convention, although assistance may also be refused on the ground that the assistance could prejudice a criminal investigation or proceeding in Kiribati (section 12(d), MACMA).

No specific time frames are specified in the MACMA, nor is there any specified procedure for periodic follow up.

Kiribati has relied on INTERPOL channels in a domestic investigation for administrative assistance. Bank secrecy is not a ground for refusal and banking records could be provided on request upon the issuance of a relevant court order. A limitation on use of information received through MLA is provided for.

Law enforcement cooperation; joint investigations; special investigative techniques (arts. 48, 49 and 50)

The law enforcement authorities of Kiribati cooperate through regional and international networks and in specific matters on a case-by-case basis. The existence of a treaty or formal memorandum of understanding (MoU) is not a prerequisite.

In principle, Kiribati could consider the Convention against Corruption as the basis for law enforcement cooperation, although there has been no experience in its application.

The Transnational Crime Unit (TCU) under the Kiribati Police cooperates internationally, not only through the Pacific Transnational Crime Network (PTCN),

but also through other counterparts (including INTERPOL and the Australian Federal Police (AFP)). Since its establishment, there have been secondments of members of the TCU in Kiribati to the Pacific Transnational Crime Coordination Centre in Apia.

Kiribati is also party to numerous regional initiatives (i.e., the Pacific Islands Chiefs of Police, Pacific Islands Forum Secretariat, Oceania Customs Organisation, Pacific Patrol Boat Program, the Pacific Islands Law Officer's Network).

The FIU has informal connections with other financial intelligence units (including Fiji FIU) and is involved with the Pacific Association of FIUs (an official memorandum of understanding is yet to be signed).

Kiribati could participate in joint investigations on a case-by-case basis based on informal arrangements. One example was cited from the 1960s (not related to corruption).

The use of special investigative techniques is not addressed in the domestic legislation and has not been tested.

3.2. Successes and good practices

Overall, the following success and good practice in implementing chapter IV of the Convention is highlighted:

- Kiribati's international law enforcement cooperation, particularly in the region.

3.3. Challenges in implementation

The following steps could further strengthen existing anti-corruption measures:

- Amend section 5(1)(b) of the Extradition Act to read, "the conduct that constitutes the offence, if committed in Kiribati, would constitute an offence (however described) in Kiribati for which the minimum penalty is imprisonment, or other deprivation of liberty, for a period of 1 year or more".
- Kiribati may wish to consider granting extradition of a person for any of the offences covered by this Convention that are not punishable under its own domestic law.
- Consider granting extradition requests that include several separate offences, one of which is extraditable.
- Review the Extradition Act to ensure all offences under the Convention are extraditable.
- Consider simplifying and streamlining procedures and evidentiary requirements (such as internal guidelines and/or a request management system) in order to allow for extradition and MLA requests to be dealt with efficiently and effectively.
- Kiribati may wish to consider entering into bilateral or multilateral agreements or arrangements on the transfer of convicted persons for Convention-related offences.

- Take legislative measures to ensure that MLA is not refused on the sole ground of bank secrecy and may not be declined on the sole ground that the offence is also considered to involve fiscal matters.
- Address the conditions of a prisoner being transferred, as outlined in paragraph 11 of article 46, in its domestic law.
- Consider amending MACMA to provide that assistance may be postponed, rather than refused, on the ground that the assistance could prejudice a criminal investigation or proceeding in Kiribati (section 12(d), MACMA).
- Consider the possibility of transferring criminal proceedings to and from a foreign State if it were in the interests of the proper administration of justice, in particular where several jurisdictions are involved.
- Consider introducing special investigative techniques, as may be necessary and within existing resources, providing the corresponding training to law enforcement personnel and ensuring that evidence derived from such techniques is admissible in court.

3.4. Technical assistance needs identified to improve implementation of the Convention

- Kiribati indicated that it would require technical assistance, including good practice examples and capacity-building, on extradition and MLA (including a manual/guidelines for staff and an internal database for tracking incoming and outgoing requests), the transfer of prisoners and criminal proceedings, joint investigations, special investigative techniques and to enhance law enforcement cooperation.

United Nations CAC/COSP/IRG/I/4/1/Add.11

Conference of the States Parties to the United Nations Convention against Corruption

Distr.: General
31 March 2015

Original: English

Implementation Review Group
Sixth session
Vienna, 1-5 June 2015
Item 2 of the provisional agenda*
Review of implementation of the United Nations Convention against Corruption

Executive summary

Note by the Secretariat

Addendum

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II. Executive summary

Israel

1. Introduction: Overview of the legal and institutional framework of Israel in the context of implementation of the United Nations Convention against Corruption

The Convention was signed on 29 November 2005 and ratified by Israel on 4 February 2009. Treaties are not automatically incorporated into Israeli law upon ratification. In order for a treaty to be implemented at the national level, appropriate adjustments are often necessary. For this reason, Israel ratifies international conventions after it is has been determined by the Government that Israel's internal law is compliant. This was the case for the Convention.

Israeli legislation sets out a comprehensive legal framework for the criminalization, prevention and eradication of corrupt practices. Israel's legal framework against corruption includes provisions from its Basic Laws (a set of basic laws containing constitutional elements, as Israel does not have a formal constitution), Penal Law, Criminal Procedure Law, Protection of Employees Law, Witness Protection Law, Rights of Victims of Crime Law, Public Service Law, Prohibition on Money Laundering Law (PMLL), International Legal Assistance Law, Extradition Law, and Encouragement of Ethical Conduct in the Public Service Law.

Israel's law enforcement agencies engage in an intensive campaign to strengthen the rule of law and implement a zero tolerance approach towards corruption. The battle against corruption has been, and remains, a matter of high priority for the executive, legislative and judicial organs. Public officials and private actors engaging in corrupt practices are prosecuted without consideration of their position or identity.

Israel has a variety of agencies and authorities responsible for implementing anti-corruption measures that cooperate with each other on a daily basis. Authorities involved in the fight against corruption include the Israel Police (IP), Office of the State Attorney, Israel Money Laundering and Terror Financing Prohibition Authority, Israel Securities Authority, Office of the State Comptroller and Ombudsman, State Control Committee (Knesset), Ethics Committee (Knesset), Government Companies Authority and the Civil Service Commission.

2. Chapter III: Criminalization and law enforcement

2.1. Observations on the implementation of the articles under review

Bribery and trading in influence (arts. 15, 16, 18 and 21)

Active and passive bribery of public officials is comprehensively criminalized in Sections 290 and the accompanying sections of the Penal Law. The type of benefit offered — be it monetary or other — and whether it was given for an act or an omission, for suspending expediting or delaying an act, or for causing preferential or adverse treatment, are all irrelevant. In addition, the law does not differentiate between cases where the bribe was given by the person himself or through another person; whether it was given directly to the person who took it or to a third party on behalf of him, whether it was given before or after the event, and whether the ultimate beneficiary was a public official or another person. There is no need for the

bribe to have actually been received or even for consent to receive or give it to have been given, in order for a criminal offence to be completed.

The definition of a public official in Israeli law is broad and includes, among others, State employees, employees of entities wholly or partially owned by the government and the holders of offices or functions under enactments, which include judicial and legislative officers. Under Section 293(7), the bribery offence covers both cases where bribes are given for the performance of acts that fall within or outside of the duties and functions of public officials.

Section 291A of the Penal Law enacts the foreign bribery offence and includes all the acts described in article 16(1) of the United Nations Convention against Corruption. The elements of the offence are identical to those of domestic bribery, other than the purpose of the bribe and the definition of the term "foreign public official", which is in line with the definitions of the terms "foreign public official" and "official of a public international organization" in the Convention. After consideration, and due to policy concerns, it was decided not to establish as a criminal offence the passive bribery of foreign public officials.

The provisions of article 18 are implemented through various provisions of the Law that deal with criminal liability for bribery.

Israel has chosen not to extend the bribery offence to the private sector. However, private entities that provide a public service are included in the definition of "public official" for the purposes of bribery offences.

Money-laundering, concealment (arts. 23 and 24)

Money-laundering is criminalized in the PMLL. The elements of money-laundering and concealment set forth in articles 23 and 24 of the Convention against Corruption are almost all covered. Under Israeli law it is a criminal offence not only to convert and transfer prohibited property or to conceal the illicit origin of such property, but also to retain possession of or use such property in the knowledge that the property is prohibited. There are, however, restrictions regarding the definition of "prohibited property".

Regarding predicate offences Israel uses a list-approach. The offence of money-laundering applies to a wide range of predicate offences, which may be deemed as such even if committed in another State, provided that they also constitute offences under the laws of that State. A comprehensive range of corruption-related offences is included, albeit not all offences established in accordance with the Convention. The prosecution of self-laundering is possible.

Embezzlement, abuse of functions and illicit enrichment (arts. 17, 19, 20 and 22)

Under section 390 of the Penal Law, any public official who steals an asset of the State or an asset which came into his possession by virtue of his official position is criminally liable if the value of the stolen asset exceeds 1,000 new sheqalim (approximately $264). Although the Convention establishes no minimum value, given that the value indicated is small, that provision may be regarded as complying with the relevant requirements of the Convention. Additionally, the offence of theft and some counts of theft with aggravated circumstances are not limited by a minimum value.

Section 390 states that stolen objects, i.e., the property in question, must pass into the public official's possession, which equates to such forms of theft as misappropriation. The definition of theft in Section 383 applies to Section 390. With regard to other elements of embezzlement by public officials, it is possible to apply other provisions, such as Section 284 (fraud and breach of trust).

Embezzlement in the private sector is covered by a range of offences in the Penal Law such as Deceit and Breach of Trust in Body Corporate (Section 425), Theft by an Employee (Section 391), Theft by a Director (Section 392) and Theft by an Agent (Section 393), whereby similar considerations as with embezzlement in the public sector regarding the minimum value of the stolen asset apply. As noted above, the offence of theft is not limited by a minimum value.

The abuse of functions is incriminated through sections 278, 280 and 284 PL. Section 284, in particular, does not require the obtaining of an undue advantage by the public official or for another, and any breach of the public trust without these elements is considered an offence.

Israel has considered the criminalization of illicit enrichment but decided against it, because it was felt to be contrary to the presumption of innocence as a fundamental principle of criminal law. There is a system of asset declarations for certain public officials, members of government, heads of municipal authorities and their deputies, and members of the Knesset in place, as well as a prohibition on public officials from accepting gifts presented to them in their capacity as public servants.

Obstruction of justice (art. 25)

The Penal Law has various provisions to address attempts on influencing the legal process. Sections 244 (Obstruction of justice), 245 (Subornation in connection with an investigation), 246 (Subornation of testimony), 249 (Harassment of witness), 250 (Improper influence) and 382A (Assault of a public official) are particularly relevant.

Liability of legal persons (art. 26)

According to section 23 of the Penal Law, a legal person is criminally liable for any offence when certain conditions set out in the provisions of that section are met. Corruption offences by legal persons are mainly punishable with criminal sanctions, although civil and administrative liability is also possible.

The result of criminal proceedings against either a corporation or the person who committed the offence does not prevent or influence the institution of criminal proceedings and a finding of criminal liability against the other party.

The criminal sanctions that can be imposed on a legal person for corruption offences are fines. Moreover, section 261 of the Companies Law enables the Attorney General to file for the dissolution of a company where such operates illegally.

Participation and attempt (art. 27)

Participation in the commission of corruption-related offences is covered by Sections 29 (Perpetrator), 30 (Enticement), and 31 (Accessory) of the Penal Law. Attempt is covered by Sections 25, 26 and 34D. Relevant case law provides extensive clarification on the nature and elements of attempt and its prosecution.

Since proposal is an element included in the bribery offences, and abetting is found in Section 31 of the Penal Law, and in light of the offences of provision of means for commission of felony and conspiracy, Israel has considered but decided not to further criminalize the mere preparation for an offence.

Prosecution, adjudication and sanctions; cooperation with law enforcement authorities (arts. 30 and 37)

The sanctions applicable to corruption-related offences are sufficiently dissuasive. Formulation of the sentences is regulated in a detailed manner and there is a range of custodial, pecuniary and administrative sanctions. In determining sentences for offences under the Convention, the court will use its discretion, taking a variety of considerations into account, such as the circumstances of the offence as well as the offender's personal circumstances.

In relation to immunities from prosecution, the members of the national Parliament (Knesset) enjoy such protection regarding "offences within their duty", which does not include corruption-related offences. If the Attorney General determines that the offence was not performed within the MK's duty and decides to prosecute, the concerned MK can invoke his/her immunity by applying to the Knesset, whose decision is subject to judicial review. However, while the personal scope of immunity is fairly limited, certain intrusive investigative measures, such as wiretapping, cannot be undertaken in relation to the investigation of a corruption-related offence, until it is lifted.

Prosecution of criminal cases, including corruption-related offences, lies within the discretion of the State Attorney's Office as representative of the Attorney General, whose decisions in the criminal area are subject to judicial review, by the High Court of Justice.

There is an array of restrictive measures that can be applied in order to ensure the presence of the defendant at criminal proceedings, including detention when there is no less harmful way to prevent the defendant from evading the proceedings.

The minimum eligibility period for early release is considered high enough and should be deemed to take sufficiently into account the gravity of the offences concerned, especially since release is not mandatory after completion of two thirds of the prison term, but subject to other considerations regarding the individual features of the offence and the offender.

Besides criminal sanctions, an official facing charges of corruption is subject to an array of disciplinary measures escalating from warning and reprimand to a range of sanctions, the severest being dismissal and disqualification, temporary or permanent. Disciplinary sanctions can also be imposed by the Civil Service Disciplinary Tribunal.

To encourage cooperation of perpetrators in obtaining evidence against co-perpetrators, a variety of incentives are provided for, ranging from mitigated punishment to immunity from prosecution.

Protection of witnesses and reporting persons (arts. 32 and 33)

The Witness Protection Law applies to anyone who reports corruption offences, as the law is not limited to a specific type of offence. Israel's Witness Protection

Authority has been set up to protect witnesses who are subject to the highest threat levels. It provides a unique protection programme which includes security, management and support, both in Israel and abroad, if needed. The witnesses and their family members are accompanied by the Authority throughout the entire criminal process in order to provide them with the most independent and normal life possible.

The definition of the term "witness" in the above-mentioned law includes victims of the offence. As to the rights of victims in general, the Rights of Victims of Crime Law includes, inter alia, the right to review the indictment, to be informed of the proceedings and express opinions regarding various stages of the proceedings.

A fairly comprehensive protective network is in place in terms of legislation, procedures and structures, dedicated to the protection of reporting persons, both in the private and public sectors. In the framework of the latter, the Office of the State Comptroller cooperates with the Witness Protection Authority to enhance available means of protection.

Freezing, seizing and confiscation; bank secrecy (arts. 31 and 40)

Seizure and forfeiture provisions are mainly contained in the Criminal Procedure Ordinance (Arrest and Search) and PMLL. Value-based confiscation is possible for certain offences under the PMLL and Dangerous Drugs Ordinance. In addition, Section 22 of the PMLL provides for the confiscation of property in civil proceedings if the person suspected of committing the crime is not present in Israel on a regular basis, if he cannot be located, and therefore an indictment cannot be filed against him, or if the property was discovered after the conviction.

The court may grant a provisional forfeiture order prior to filing an indictment or a request for forfeiture in civil proceedings, if it is satisfied that there are reasonable grounds to assume that the property is likely to disappear or that actions are likely to prevent the subsequent forfeiture of such property. Israeli legislation provides extensive protection to bona fide third parties.

Israel has considered the adoption of measures in accordance with article 31, paragraph 8, through the preparation of a draft bill which was under consultation at the time of review.

Israeli law allows investigative authorities to overcome confidentiality considerations and to obtain the requisite information from banks through a court order as provided in Section 43 of the Criminal Procedure Law.

Statute of limitations; criminal record (arts. 29 and 41)

Israel has established a 10-year statute of limitations for most corruption offences in Section 9 (Prescription of offence) of the Criminal Procedure Law. An investigation of an offence, an indictment or any other court proceeding suspends the statute of limitations for that offence. A court may suspend criminal proceedings if it would be impossible to bring the defendant to trial.

The police receive foreign criminal records and use them for intelligence purposes. For such records to be used as evidence, mutual legal assistance or INTERPOL channels are used. Relevant provisions are also found in Israel's treaties.

Jurisdiction (art. 42)

Israeli legislation establishes jurisdiction over offences committed in whole or in part within the national territory and on board Israeli vessels and airplanes. Jurisdiction also applies to acts of preparation to commit crimes, attempts to commit crimes, attempts to influence or incite crimes, or conspiracy to commit crimes, even when committed outside of Israeli territory, where the intended crime was to have been committed in whole or in part in Israel. Israel can also apply extraterritorial criminal jurisdiction under certain circumstances.

Consequences of acts of corruption; compensation for damage (arts. 34 and 35)

Common law principles of contract rescission and administrative law allow an existing contract or concession to be annulled, rescinded or withdrawn if it was awarded as a result of an act of corruption. This is in addition to tendering procedures, which allow for debarments and disqualifications. Remedies can be awarded to affected claimants, either in the framework of criminal proceedings or following civil suits.

Specialized authorities and inter-agency coordination (arts. 36, 38 and 39)

There are several bodies and authorities with specialized tasks in the area of investigating and prosecuting corruption. Within the Israeli police several fraud units operate, whereas the specialized, highly trained Lahav 433 unit within the IP's Investigation and Intelligence Department incorporates five specialized prosecution and investigative subunits focusing on corruption and international asset recovery.

In the State Attorney's Office, the Criminal Department and the Economic Crimes Department (as well as the District Attorneys and their prosecutors) are responsible for the prosecution of corruption offences.

In the State Comptroller's Office, the Division for Special Functions is responsible for following up on allegations of corruption against public officials. If the findings of the investigation indicate a likelihood of a criminal offence, the case is then referred to the Attorney General.

The different bodies combating corruption are coordinated by an inter-agency Implementation Committee, chaired by the Head of the Criminal Investigations Division of the IP, within a framework of a strong culture of cooperation. The same is evident in regard to cooperation between prosecuting or investigating authorities, on the one hand, and private sector entities, in the other.

2.2. Successes and good practices

Overall, the following successes and good practices in implementing Chapter III of the Convention are highlighted:

- The definition of bribery is constructed widely, with a view to avoiding potential loopholes.
- A presumption of fact has developed in Israeli case law stating that when a public official is given a benefit by a person with whom he is in a professional relationship or has an official connection, such benefit would be considered to be given for an act related to his function as a public official.

- The Israeli legislature has introduced, specifically for bribery offences, the option of imposing fines based not only on the benefit obtained, but also on the intended benefit, as an effective deterrent against bribes in high value transactions.
- The existence of Guidelines for State Attorneys on sanctions for bribery offences, providing detailed instructions on the application of relevant penalties depending on gravity of corresponding offences, was positively noted as conducive to the implementation of article 30, paragraph 1.
- The reviewers note the significant number of prosecutions and convictions of Ministers and Members of the Knesset during recent years and consider them as a success and an indication of the overall effectiveness of the system in combating political corruption.
- Asset forfeiture in Israel can be considered as a prime example of successful policy that has been developed from the ground up. There is extensive implementation involving significant assets, as a result, among others, of the effective cooperation of all relevant institutions.
- Israel appears in general to promote and cultivate a strong culture of cooperation among its law enforcement and anti-corruption bodies.
- The Israeli Police, together with the tax and securities authorities, have developed a unique computerized process for the fast, efficient, and secure exchange of information between the police and the financial market.

2.3. Challenges in implementation

While noting that Israel has a robust criminal justice system and is in large part in compliance with the provisions of the Convention against Corruption, the reviewers identified a few challenges in implementation and/or grounds for further improvement (depending on the mandatory or optional nature of the relevant Convention requirements):

- To promote the goals of article 20, Israel could consider giving the State Comptroller, the legal advisor of the Knesset or some other appropriate body or person authority over the asset declarations of Members of the Knesset.
- With respect to articles 23 and 24, it is recommended that Israel finalize the process of the adoption of the amendments to Schedule 2 of the PMLL, lowering the threshold for the price of the "prohibited property" and removing the differentiation between different kinds of such property.
- Consider including all Convention against Corruption offences as predicate offences for the purpose of money-laundering, including in particular Sections 244 (Obstruction of justice), 245 (Subornation in connection with an investigation), and 246 (Subornation of testimony) of the Penal Law.
- Israel is encouraged to proceed with the reform of the regime governing the criminal liability of legal persons, which appears to be conducive to further deterrence and prevention.

- It is recommended to pursue legislation of a bill aimed at including corruption among the offences that allow the use of special investigative techniques such as wiretapping against Members of the Knesset.
- Israel might consider looking more closely into the matter of out-of-court settlements in regards to corruption offences related to securities, in order to ensure adequate predictability by establishing predetermined criteria.
- Israel is encouraged to continue to strengthen measures to raise awareness of public sector reporting and protection mechanisms.
- Israel may wish to consider entering into international agreements or arrangements concerning the potential provision of preferential treatment by the competent authorities of one State to a cooperating person located in another.
- Israel is encouraged to continue strengthening measures with a view to increasing reporting of corruption offences by private persons.

3. Chapter IV: International cooperation

3.1. Observations on the implementation of the articles under review

Extradition; transfer of sentenced persons; transfer of criminal proceedings (arts. 44, 45 and 47)

Extradition is governed by the Extradition Law, as well as multiple international treaties and conventions. Dual criminality is a condition for extradition, and the law provides for a minimum penalty requirement: an extraditable offence is defined as an offence which, had it been committed in Israel, would be punishable by imprisonment for at least one year. Nonetheless, to the extent that Israel has criminalized the offences covered by the Convention and has enacted penalties for them in excess of one year, Convention offences are extraditable offences under Israeli law.

Israel makes "accessory offences" extraditable, if the main offence satisfies the extradition requirements. As regards "political offences", a Convention-based offence would not be treated as such, in case the Convention were used as a basis for extradition.

Israel indicated that it partially considers this Convention as the legal basis for extradition in respect of corruption-related offences. With respect to States parties with which it does not have an extradition treaty, it has declared that it shall consider each request for extradition for an offence under the Convention with due seriousness and may elect to extradite in such cases pursuant to a special ad hoc agreement with the State party, upon a basis of reciprocity.

There are a number of provisions designed to enable the use of expedited extradition procedures, at the wanted person's option, in appropriate cases. The more time-consuming factor in extradition procedures is the preparation of materials related to the prima facie evidence that must be demonstrated under Section 9(a) of the Extradition Law.

Section 5 of the Extradition Law provides that where a petition for extradition has been submitted, the Jerusalem District Court may order the detention of the wanted

person. The Extradition Law also permits provisional arrest of a wanted person in cases of urgency even before an extradition request is formally received.

Israel can extradite its nationals to another country to stand trial with respect to all extradition offences, including corruption offences. However, if the wanted person was both an Israeli citizen and resident at the time he allegedly committed the crime, he will be extradited only on condition that he be given the option of serving in Israel any sentence of imprisonment imposed upon him in the requesting State.

The individual rights of persons wanted for extradition are protected both with respect to the procedural aspects of their extradition and the substantive circumstances under which they may be extradited.

A requested person shall not be extradited if there are grounds to suspect, among others, that the request for extradition was submitted for reasons of racial or religious discrimination against the wanted person; if it was submitted to prosecute or punish the wanted person for an offence of a political character; and if the wanted person would be extradited to a legal system which would not protect his or her basic human rights. Extradition requests will not be refused for criminal offences on the ground that the offence is also considered to involve fiscal matters.

The transfer of sentenced prisoners is regulated in Israel's Serving of a Prison Sentence in the Country of the Prisoners Nationality Law. The transfer can be either based on a convention or an ad hoc agreement. The transfer of criminal proceedings to another jurisdiction is also possible, as a matter of police or prosecutorial discretion.

Mutual legal assistance (art. 46)

The International Legal Assistance Law allows Israel to offer full and effective cooperation to authorities in foreign States. All listed forms of assistance under this Convention may be provided or requested with respect to criminal matters, including measures concerning the identification, tracing and freezing of proceeds of crime and the recovery of assets. There are no restrictions regarding legal persons.

The existence of a treaty is not a prerequisite to provide mutual legal assistance (MLA). However, Israel has entered into MLA treaties with a large number of States and has acceded to numerous relevant conventions. The spontaneous transmission of information to competent authorities of other States is an inherent part of informal law enforcement cooperation.

Dual criminality is not per se a requirement for MLA, with the exception of assistance concerning freezing, seizure and confiscation of assets. Israeli law also takes into account *de minimis* considerations.

The Department of International Affairs of the Office of the State Attorney is the Central Authority for purposes of assistance requests submitted under the Convention. It is expected that requests will be submitted in writing. Urgent requests for MLA may be transmitted by fax. Requests must be submitted either in Hebrew or English.

A request for assistance will be performed in the manner in which an act of that kind is performed in Israel. Assistance shall be performed in the particular manner

requested so long as this does not violate Israeli law. The rule is that Israel will preserve the confidentiality of MLA requests. Videoconference hearings, both in Israeli cases and on behalf of foreign authorities, are possible and have become increasingly common.

MLA requests will not be denied simply on general grounds of bank secrecy. There are a number of discretionary bases upon which the Minister of Justice is permitted to refuse assistance. Israel would not refuse a request relating to a Convention offence simply because it involved fiscal elements. Assistance may be postponed if it would interfere with an ongoing domestic criminal proceeding. Israel will, through dialogue with requesting States, seek to resolve issues that could prevent the execution of requests for assistance, and in the rare cases where a request is denied, a letter is sent to the requesting State informing it of the reasons.

Israel will generally assume the ordinary expenses of executing MLA requests. Certain expenses, such as expert witness expenses, may be recognized as exceptions which are borne by the requesting State.

Publically available records, documents and information are routinely provided. Non-publically available information held by a public authority may be provided if the information is of the kind that may, under Israeli law, be transmitted to another public authority in Israel.

Law enforcement cooperation; joint investigations; special investigative techniques (arts. 48, 49 and 50)

Israel has a modern and comprehensive regime for law enforcement cooperation. The Ministry of Public Security has signed several bilateral agreements on cooperation in the fight against crime, and there are also other bilateral agreements and multilateral conventions providing bases for cooperation between Israeli and other law enforcement authorities. Requests are often received via informal and INTERPOL channels.

This Convention may be considered as the basis for mutual law enforcement cooperation, although Israel does not require the existence of a treaty. Any form of assistance requested may be performed to the same extent and subject to the same safeguards as those that apply had the crime occurred in Israel. There are contact points nominated to facilitate cooperation and the Israel Police has a number of representatives stationed in diplomatic missions abroad.

Joint investigations are possible under existing legislation, international conventions or bilateral agreements. Sometimes a protocol is signed between the parties for the purpose of a specific investigation. However, there have not been instances of joint investigations in corruption matters.

Israel does not require specific agreements to carry out special investigative techniques. At the same time, Israel is party to several agreements that provide for techniques such as controlled delivery. Wiretapping will be also permitted under certain circumstances.

3.2. Successes and good practices

Israel has established a comprehensive and coherent legal framework on international cooperation in criminal matters. In this context, the following

successes and good practices in implementing Chapter IV of the Convention are highlighted:

- The Ministry of Justice (Office of the State Attorney) has recently issued guidelines on the consideration of requests for MLA concerning seizure and confiscation. The application of these guidelines is expected to make international cooperation more effective.
- Israel is a provider of technical assistance in the form of expert knowledge to foreign law enforcement authorities, for example through the exchange of intelligence and legal information by the Israeli police and the FIU with international counterparts.

3.3. Challenges in implementation

The following points are brought to the attention of the Israeli authorities for their action or consideration (depending on the mandatory or optional nature of the relevant Convention requirements) with a view to enhancing international cooperation to combat offences covered by the Convention:

- It is recommended that Israel adapt its information system to allow it to collect data on the type of MLA and extradition requests, the time frame for providing responses to these requests, and the response provided, including any grounds for refusal.
- Israel is encouraged to actively promote a policy of acceding to or concluding new bilateral and multilateral agreements or arrangements to carry out or enhance the effectiveness of extradition.
- Israel may wish to consider adopting more specific guidelines or regulations with regard to the procedure of transferring criminal proceedings among States parties.